



## Minnesota Pollution Control Agency

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November 8, 2013

Mr. Larry Sutherland  
General Manager – Minnesota Ore Operations  
United States Steel Corporation  
P.O. Box 417  
Mountain Iron, MN 55768

RE: United States Steel Corporation Correspondence Related to the Designation of a “Water Used for Production of Wild Rice”

Dear Mr. Sutherland:

The Minnesota Pollution Control Agency (MPCA) has received two letters from United States Steel Corporation (USS) related to the MPCA’s process for designation of a “water used for production of wild rice” (WUFPOWR). The first was an August 12, 2013, letter from David Smiga responding to a MPCA document called “Draft Staff Recommendation for ‘waters used for production of wild rice’ downstream of the US Steel Minntac tailings basin.” The second was a September 27, 2013, letter from you responding to MPCA comments on a June 27, 2013, Sulfate Reduction Plan revision required by the reissued water permits for the Keetac operation. In both letters, USS cites Minnesota Session Laws 2011, First Special Session, Chapter 2, Article 4 (2011 Law) asserting it is premature for the MPCA to determine that waters, other than those specifically listed in Minnesota rules, qualify as “waters used for the production of wild rice.”

Though those two letters may raise other issues, this letter will respond to that specific assertion.

The MPCA has carefully considered USS’ assertion. The MPCA believes that it is authorized to determine whether a particular water is a WUFPOWR on the basis of information developed about the particular water. The MPCA will continue to apply the current draft staff recommendations related to WUFPOWR subject to possible future modification after the criteria development process is completed.

However, because the MPCA continues to receive questions from all stakeholders about how such a determination is made, and specifically a number of requests to review the criteria the MPCA is using for such determinations, the MPCA has concluded that it is appropriate to provide opportunity for input on the criteria following the process laid out in Section 32 (b) of the 2011 Law. The MPCA plans to begin to develop criteria by meeting with the Minnesota Department of Natural Resources and Indian Tribes in late 2013 and anticipates taking public comment from other interested parties through public notice and comment sometime in early 2014.

The draft MPCA staff recommendations mentioned by USS include the following language: “This draft MPCA staff recommendation for ... is based on information currently available. MPCA staff will consider additional information that may become available in the future; whether from project proposers or from other interested/affected parties, and reserves the right to modify the draft staff recommendation accordingly.” Once the MPCA has completed the criteria development process, the MPCA will consider those criteria as additional information and will reconsider the current draft MPCA staff recommendations for the waters mentioned in the two USS letters. MPCA staff will share the resulting draft staff recommendation (related to whether those waters are WUFPOWR and subject to the existing standard) with USS and the Tribes as is the current practice. The resulting draft staff recommendation will include any revisions as appropriate based on the additional information.

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During the public comment period for any related permit or following issuance of such permit, USS may challenge the application of the criteria in the permitting process. As it did in the litigation initiated by the Minnesota Chamber of Commerce, the MPCA continues to reject any suggestion that WUFPOWR are limited to waters used for the irrigation of paddy rice, and not waters used for support of wildlife and other purposes. See Minn. R. 7050.0224, subp. 4.

Regarding the criteria development processes, the MPCA notes that the 2011 legislation has two distinct parts, rulemaking and criteria development. The 2011 legislation provides:

*Sec. 32. WILD RICE RULEMAKING AND RESEARCH.*

*(a) Upon completion of the research referenced in paragraph (d), the commissioner of the Pollution Control Agency shall initiate a process to amend Minnesota Rules, chapter 7050. The amended rule shall:*

*(1) address water quality standards for waters containing natural beds of wild rice, as well as for irrigation waters used for the production of wild rice;*

*(2) designate each body of water, or specific portion thereof, to which wild rice water quality standards apply; and*

*(3) designate the specific times of year during which the standard applies.*

Nothing in this paragraph shall prevent the Pollution Control Agency from applying the narrative standard for all class 2 waters established in Minn. R. ch. 7050.0150, subp. 3.

*(b) "Waters containing natural beds of wild rice" means waters where wild rice occurs naturally. Before designating waters containing natural beds of wild rice as waters subject to a standard, the commissioner of the Pollution Control Agency shall establish criteria for the waters after consultation with the Department of Natural Resources, Minnesota Indian tribes, and other interested parties and after public notice and comment. The criteria shall include, but not be limited to, history of wild rice harvests, minimum acreage, and wild rice density.*

2011 First Special Session, ch. 2, Art. 4 (emphasis added). The legislature has required that Minn. R. ch. 7050 be amended to designate each body of water, or specific portion thereof, to which wild rice water quality standards apply." Rulemaking has a long established formal process that the MPCA follows and will follow in designating waters. Referring to the italicized language, the legislature established a separate criteria development process for the MPCA to follow and specified that the process is to include a consultation component and a public notice and comment component separate from the public notice and comment process that will occur during the rulemaking called for by the legislation. The legislature has required the MPCA to complete the criteria development process prior to rulemaking for designating waters. While the criteria are to be used in the designation process, the legislation imposes no restrictions upon the MPCA's permitting authorities, its obligations to protect impaired waters or its use of the criteria on a case-by-case basis to identify impaired waters and when effluent limitations are necessary in permits.

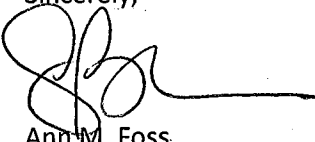
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Based on the foregoing, the MPCA has concluded that it is appropriate to move forward with the process to establish criteria for designating "waters containing natural beds of wild rice," prior to the rulemaking.

The MPCA will use the criteria that emerge from this process for three purposes: to inform the process of "designating" waters subject to the standard in the wild rice standards rulemaking, to apply on a case-by-case basis to identify when effluent limitations are necessary in permits, and to aid the MPCA when listing impaired waters. Attached is a proposed timeline for activities related for the wild rice sulfate standard.

Please feel free to contact me with questions at 651-757-2366.

Sincerely,

*for*   
Ann M. Foss  
Director  
Metallic Mining Sector  
Industrial Division

AMF/SB:rm

Attachment

Wild Rice Sulfate Standard -- Proposed Timeline of Related Activities

(Note: Green shading identifies public notice and dialogue opportunities)

Last Revised: 11/8/13

		November-13	December-13	January-14	February-14	March-14	April-14	May-14 =>
Wild Rice Sulfate Standards Study <sup>1</sup>			Receive preliminary study results by December 31, 2013.	MPCA evaluate study data and develop wild rice sulfate standard rulemaking recommendations.		Share and discuss recommendations; begin to develop technical support details.	Begin rulemaking process to designate waters subject to standard and address any recommended changes to the standard.	
"Water Used for Production of Wild Rice" (WUFPOWER) Criteria Development <sup>2</sup>		MPCA meet with tribes, DNR and wild rice advisory committee to discuss WUFPOWER criteria development.		Public notice draft WUFPOWER criteria.	Review comments and revise WUFPOWER criteria as appropriate.	Use WUFPOWER criteria to inform process of "designating" waters subject to the sulfate wild rice standard; apply criteria for rulemaking, assessment, impaired waters list development and permitting.		
303 (d) Impaired Waters List <sup>3</sup>	Wild rice sulfate assessments	Wait to identify and assess WUFPOWER for the wild rice sulfate standard until WUFPOWER criteria are available.				Identify and assess WUFPOWER for the wild rice sulfate standard, consistent with WUFPOWER criteria. Public notice draft sulfate-impaired WUFPOWER. Submit WUFPOWER sulfate assessments to EPA when complete. <sup>4</sup>		
	All other assessments	Draft 2014 impaired waters list (minus WUFPOWER assessments) on MPCA website.	Hold public meetings on draft 2014 impaired waters list.	Public notice draft 2014 impaired waters list.	Review and respond to comments and revise draft 2014 impaired waters list as appropriate.	Draft 2014 impaired waters list due to EPA April 1, 2014. <sup>4</sup>		
NPDES Permit Development <sup>5</sup>		Continue to develop permits using draft staff recommendations related to identifying water used for production of wild rice. <sup>6</sup>				Re-evaluate draft staff recommendations using WUFPOWER criteria.		Any permit will be put on public notice prior to issuance. <sup>6</sup>

1. MN Session Laws 2011, First Special Session, Chapter 2, Article 4, Section 32 (d).

2. MN Session Laws 2011, First Special Session, Chapter 2, Article 4, Section 32 (b).

3. Federal Clean Water Act, 1972, Section 303 (d); MN Statutes 114D.25, subd. 1.

4. Depending on timing, the wild rice sulfate assessments may be submitted to EPA with the other assessments, or more likely as a separate package.

5. Federal Clean Water Act, 1972, Section 402; MN Statutes 115.03 , subd. 5

6. Permits will be put on public notice prior to issuance; a permit could go on notice at any point in the timeline.